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### WHAT TO EXPECT WHEN YOUR EMPLOYEE IS EXPECTING

Several federal, New York State, and New York City laws apply to the periods before, during, and after childbirth, adoption, and fostering of a child and provide, among other things, protections against discrimination, reasonable accommodations, and paid and unpaid leave for employees. This quick reference guide summarizes basic provisions of federal, New York State, and New York City laws applicable to certain employers (depending on their size based on the number of employees). A more detailed outline of these laws can be found [here](#). Frequently, more than one law may apply to a specific situation, and we recommend you consider applicable law at the city, state, and federal levels. This quick reference guide is not meant to be a complete list of all statutes that might be applicable to your organization, nor is it a complete summary of all of the provisions of each law. **The information in this quick reference guide does not constitute legal advice. Note that employment law changes constantly; it is therefore important to consult an employment lawyer to address your specific questions.**

#### Quick Reference Guide

FEDERAL LAW				
	Family and Medical Leave Act	Americans with Disabilities Act	Pregnancy Discrimination Act	Patient Protection and Affordable Care Act
<b>Which employers are covered?*</b>	<ul style="list-style-type: none"> <li>Employers with <b>50 or more</b> employees in current or prior year</li> </ul>	<ul style="list-style-type: none"> <li>Employers with <b>15 or more</b> employees in the current or prior year</li> </ul>	<ul style="list-style-type: none"> <li>Employers with <b>15 or more employees</b> in the current or prior year</li> </ul>	<ul style="list-style-type: none"> <li>Employers with <b>50 or more</b> employees</li> </ul>
<b>Leave, reasonable accommodations or prohibition of discrimination?</b>	<ul style="list-style-type: none"> <li>Leave               <ul style="list-style-type: none"> <li>12 weeks in 12-month period (26 weeks for military caregiver leave)</li> </ul> </li> <li>no interference or retaliation</li> </ul>	<ul style="list-style-type: none"> <li>Reasonable accommodations</li> <li>Anti-discrimination</li> </ul>	<ul style="list-style-type: none"> <li>Accommodate (or not) same as other with similar ability to work</li> <li>Anti-discrimination</li> </ul>	<ul style="list-style-type: none"> <li>Reasonable break time and accommodations (private space to pump)</li> </ul>
<b>Applicable period(s)†</b>	<ul style="list-style-type: none"> <li>Pregnancy</li> </ul>	<ul style="list-style-type: none"> <li>Pregnancy</li> </ul>	<ul style="list-style-type: none"> <li>Pregnancy</li> </ul>	<ul style="list-style-type: none"> <li>Pumping upon</li> </ul>

\* Note that certain laws specify additional requirements to determine whether an employee is covered. For specific questions, please consult the primary law.

<b>FEDERAL LAW</b>				
	<b>Family and Medical Leave Act</b>	<b>Americans with Disabilities Act</b>	<b>Pregnancy Discrimination Act</b>	<b>Patient Protection and Affordable Care Act</b>
	<ul style="list-style-type: none"> <li>• Childbirth and recuperation</li> <li>• Bonding time following childbirth, adoption or foster placement</li> </ul>	<ul style="list-style-type: none"> <li>• Childbirth</li> <li>• Post-partum</li> </ul>	<ul style="list-style-type: none"> <li>• Childbirth</li> <li>• Pumping upon return to work</li> </ul>	return to work
<b>Undue hardship exception?</b>	<ul style="list-style-type: none"> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• Yes, for reasonable accommodations</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>
<b>Who is eligible?</b>	<ul style="list-style-type: none"> <li>• Male or female employees with at least 12 months (not necessarily consecutive) of service, who have worked 1,250 hours in 12-month period prior to start of leave, at a site where at least 50 employees are working within 75 miles</li> </ul>	<ul style="list-style-type: none"> <li>• Female employees</li> </ul>	<ul style="list-style-type: none"> <li>• Female employees</li> </ul>	<ul style="list-style-type: none"> <li>• Female employees</li> </ul>
<b>Qualifying events</b>	<ul style="list-style-type: none"> <li>• Employee’s serious health condition, including incapacity due to pregnancy and prenatal medical care</li> <li>• Childbirth</li> <li>• Care of new child</li> <li>• Family member’s serious health condition</li> <li>• Military exigency</li> <li>• Military caregiver leave</li> </ul>	<ul style="list-style-type: none"> <li>• Not pregnancy alone, but impairments from pregnancy and conditions resulting from interaction of pregnancy and underlying disability</li> </ul>	<ul style="list-style-type: none"> <li>• Pregnancy</li> <li>• Childbirth</li> <li>• Related medical conditions</li> <li>• Breastfeeding after child’s birth</li> </ul>	<ul style="list-style-type: none"> <li>• Breastfeeding during first year after child’s birth</li> </ul>
<b>Who is a “family</b>	<ul style="list-style-type: none"> <li>• Spouse, child, parent</li> </ul>	N/A	N/A	N/A

† This Quick Reference Guide is focused on pregnancy, childbirth adoption and fostering placement. For a discussion of the broader applications of these laws, see the full [“What to Expect When Your Employee is Expecting”](#) outline.

<b>FEDERAL LAW</b>				
	<b>Family and Medical Leave Act</b>	<b>Americans with Disabilities Act</b>	<b>Pregnancy Discrimination Act</b>	<b>Patient Protection and Affordable Care Act</b>
<b>member” of the employee?</b>				
<b>Is leave paid?</b>	<ul style="list-style-type: none"> <li>No; employer may allow/require employees to use accrued paid leave to run concurrently with FMLA leave</li> </ul>	N/A	N/A	<ul style="list-style-type: none"> <li>Employer not required to pay for work time spent pumping</li> </ul>
<b>Maintenance of health insurance?</b>	<ul style="list-style-type: none"> <li>Yes</li> </ul>	N/A	N/A	N/A
<b>Job protection?</b>	<ul style="list-style-type: none"> <li>Yes</li> </ul>	<ul style="list-style-type: none"> <li>Retaliation is prohibited</li> </ul>	<ul style="list-style-type: none"> <li>Retaliation is prohibited</li> </ul>	N/A

<b>NEW YORK STATE LAW</b>				
	<b>New York State Disability Benefits Law</b>	<b>New York State Human Rights Law</b>	<b>New York State Paid Family Leave</b>	<b>New York Labor Law</b>
<b>Which employers are covered?‡</b>	<ul style="list-style-type: none"> <li>All NYS employers with <b>one or more</b> employees</li> </ul>	<ul style="list-style-type: none"> <li>All NYS employers with <b>four or more</b> employees</li> </ul>	<ul style="list-style-type: none"> <li>All NYS employers with <b>one or more</b> employees</li> </ul>	<ul style="list-style-type: none"> <li><b>All</b> NYS employers</li> </ul>
<b>Leave, reasonable accommodations or prohibition of discrimination?</b>	<ul style="list-style-type: none"> <li>Leave <ul style="list-style-type: none"> <li>Up to 26 weeks during 52 consecutive weeks</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Reasonable accommodations</li> <li>Anti-discrimination</li> </ul>	<ul style="list-style-type: none"> <li>Leave <ul style="list-style-type: none"> <li>Up to 8 weeks in 2018</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Reasonable break time and accommodations (private space to pump)</li> <li>Anti-discrimination</li> </ul>
<b>Applicable period(s)</b>	<ul style="list-style-type: none"> <li>Pregnancy</li> <li>Childbirth and recuperation</li> </ul>	<ul style="list-style-type: none"> <li>Pregnancy</li> <li>Childbirth and recuperation</li> </ul>	<ul style="list-style-type: none"> <li>Bonding time following childbirth,</li> </ul>	<ul style="list-style-type: none"> <li>Pumping upon return to work</li> </ul>

‡ Note that certain laws specify additional requirements (such as waiting periods for new hires) to determine whether an employee is covered. For specific questions, please consult the primary law.

<b>NEW YORK STATE LAW</b>				
	<b>New York State Disability Benefits Law</b>	<b>New York State Human Rights Law</b>	<b>New York State Paid Family Leave</b>	<b>New York Labor Law</b>
		<ul style="list-style-type: none"> <li>• Securing custody of child</li> </ul>	adoption, or foster placement	
<b>Undue hardship exception?</b>	<ul style="list-style-type: none"> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• Yes, for reasonable accommodations</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>
<b>Who is eligible?</b>	<ul style="list-style-type: none"> <li>• Employees disabled by an off-the-job injury or illness, including female employees with pregnancy/childbirth-related conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Female employees</li> <li>• Male employees with children</li> </ul>	<ul style="list-style-type: none"> <li>• Full-time male/female employees after working 26 consecutive weeks</li> <li>• Part-time male/female employees (working fewer than 20 hours per week) after 175 days</li> </ul>	<ul style="list-style-type: none"> <li>• Female employees</li> </ul>
<b>Qualifying events</b>	<ul style="list-style-type: none"> <li>• Disability due to pregnancy/childbirth (evidenced by medical report)</li> </ul>	<ul style="list-style-type: none"> <li>• Pregnancy-related conditions</li> <li>• Securing legal custody of a child</li> <li>• Familial status</li> </ul>	<ul style="list-style-type: none"> <li>• Childbirth</li> <li>• Adoption</li> <li>• Fostering of a child</li> <li>• Serious health condition of family member</li> </ul>	<ul style="list-style-type: none"> <li>• Breastfeeding during three years after child's birth</li> </ul>
<b>Who is a "family member" of the employee?</b>	N/A	N/A	<ul style="list-style-type: none"> <li>• Child, parent, spouse, domestic partner, parent-in-law, grandparent, or grandchild</li> </ul>	N/A
<b>Is leave paid?</b>	<ul style="list-style-type: none"> <li>• Yes <ul style="list-style-type: none"> <li>○ 50% of employee's average weekly wage, up to \$170 per week</li> </ul> </li> </ul>	N/A	<ul style="list-style-type: none"> <li>• Yes <ul style="list-style-type: none"> <li>○ For 2018, lower of 50% of (1) employee's</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Employer not required to pay for work time spent pumping, but may</li> </ul>

<b>NEW YORK STATE LAW</b>				
	<b>New York State Disability Benefits Law</b>	<b>New York State Human Rights Law</b>	<b>New York State Paid Family Leave</b>	<b>New York Labor Law</b>
			average weekly wage and (2) state average weekly wage for up to 8 weeks (capped at \$652.96)	allow employees to use paid break or meal time
<b>Maintenance of health insurance?</b>	<ul style="list-style-type: none"> <li>• Employer not responsible for medical care</li> </ul>	N/A	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	N/A
<b>Job protection?</b>	<ul style="list-style-type: none"> <li>• No</li> </ul>	<ul style="list-style-type: none"> <li>• Retaliation is prohibited</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	N/A

<b>NEW YORK CITY LAW</b>		
	<b>New York City Human Rights Law</b>	<b>New York City Earned Safe and Sick Time Act</b>
<b>Which employers are covered?<sup>§</sup></b>	<ul style="list-style-type: none"> <li>• NYC employers with <b>four or more</b> employees</li> </ul>	<ul style="list-style-type: none"> <li>• All NYC employers: <ul style="list-style-type: none"> <li>○ with <b>five or more</b> employees must provide <b>paid</b> sick leave</li> <li>• with <b>fewer than five</b> employees must provide <b>unpaid</b> sick leave</li> </ul> </li> </ul>
<b>Leave, reasonable accommodations or prohibition of discrimination?</b>	<ul style="list-style-type: none"> <li>• Reasonable accommodations</li> <li>• Anti-discrimination</li> <li>• Pumping upon return to work</li> </ul>	<ul style="list-style-type: none"> <li>• Leave</li> </ul>
<b>Applicable period(s)</b>	<ul style="list-style-type: none"> <li>• Pregnancy</li> <li>• Childbirth</li> <li>• Status as a “caregiver”</li> </ul>	<ul style="list-style-type: none"> <li>• Pregnancy</li> <li>• Childbirth and recuperation</li> <li>• Childcare</li> </ul>
<b>Undue hardship exception?</b>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	<ul style="list-style-type: none"> <li>• No</li> </ul>
<b>Who is eligible?</b>	<ul style="list-style-type: none"> <li>• Female employees</li> <li>• Male employees who are “caregivers”</li> </ul>	<ul style="list-style-type: none"> <li>• Male/female employees working at least 80 hours per year</li> </ul>

<sup>§</sup> Note that certain laws specify additional requirements to determine whether an employee is covered. For specific questions, please consult the primary law.

<b>NEW YORK CITY LAW</b>		
	<b>New York City Human Rights Law</b>	<b>New York City Earned Safe and Sick Time Act</b>
<b>Qualifying events</b>	<ul style="list-style-type: none"> <li>• Pregnancy</li> <li>• Childbirth</li> <li>• Related medical condition</li> <li>• Caregiving</li> </ul>	<ul style="list-style-type: none"> <li>• Illness or health care visits of employee and family members</li> <li>• Employee or a family member of the employee being the victim of family offense matters, sexual offenses, stalking, or human trafficking</li> <li>• Childcare in the event school or child care provider is closed</li> </ul>
<b>Who is a “family member” of the employee?</b>	N/A	<ul style="list-style-type: none"> <li>• Child, parent, spouse, domestic partner, parent-in-law, grandparent, grandchild, sibling, child of spouse or domestic partner, any other blood relative of the employee and any other individual whose close association with the employee is the <i>equivalent of a family relationship</i></li> </ul>
<b>Is leave paid?</b>	N/A	<ul style="list-style-type: none"> <li>• Yes, if five or more employees</li> </ul>
<b>Maintenance of health insurance?</b>	N/A	<ul style="list-style-type: none"> <li>• Yes</li> </ul>
<b>Job protection?</b>	N/A	<ul style="list-style-type: none"> <li>• Retaliation is prohibited</li> </ul>

***This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Judith Moldover at (212) 219-1800 ext. 250 or visit our website at [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information.***

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